



June 2, 2000

Ms. Elaine Snow  
Staff Attorney  
Texas Department of Health  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756-3199

OR2000-2158

Dear Ms. Snow:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135702.

The Department of Health (the “department”) received a request for information relating to an internal audit of the Medical Transportation Program which is currently in progress. You claim that the requested information is excepted from disclosure under sections 552.101 in conjunction with various confidentiality laws, and 552.116 of the Government Code.<sup>1</sup> You have provided a representative sample of the requested information to this office for review.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. You claim that information identifying Medicaid patients is excepted from public disclosure by Human Resource Code 12.003 and other statutes. In pertinent part Human Resource Code 12.003 provides;

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<sup>1</sup>You originally asserted that certain email messages were excepted from disclosure by section 552.107. However, you subsequently withdrew this argument.

<sup>2</sup>We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(a) Except for purposes directly connected with the administration of the department's assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, or any information concerning, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties.

In Open Records Decision No. 584 (1991), this office concluded that “[t]he inclusion of the words ‘or any information’ juxtaposed with the prohibition on disclosure of the names of the department’s clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients’ names and addresses.” Consequently, it is the specific information pertaining to individual clients, and not merely the clients’ identities, that is made confidential under section 12.003. *See* Hum. Res. Code §21.012; Open Records Decision No. 166 (1977). As release of information in response to a request under the Public Information Act is not a release for a purpose directly connected with the administration of the department's assistance programs, we conclude that the submitted documents identifying medicaid patients must be withheld in their entirety under Government Code section 552.101 in conjunction with section 12.003 of the Human Resources Code. Because we make a determination under section 12.003, we need not address the other arguments against disclosure you raise for this information under section 552.101.

You contend that the remaining responsive information is excepted from disclosure by section 552.116 of the Government Code. This section, as amended by the Seventy-sixth Legislature, provides:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency or institution of higher education as defined by Section 61.003, Education Code, is excepted from the [public disclosure] requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

(1) “Audit” means an audit authorized or required by a statute of this state or the United States and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116.

This section excepts from public disclosure only information that is prepared or maintained in conducting an audit or investigation which is authorized or required by a statute. You relate that the requested information consists of "audit working papers and other documents being reviewed during a current audit of the Medical Transportation Program, which is being performed by the TDH's Internal Audit Division." Although you have not indicated the statutory authority for the audit that is in progress, we note that internal audits are authorized by chapter 2102 of the Government Code, the "Texas Internal Auditing Act." The duties of internal auditors are delineated in section 2102.007(a) of that chapter, which specifies:

[t]he internal auditor shall:

(1) report directly to the state agency's governing board;

(2) develop an annual audit plan;

(3) conduct audits as specified in the audit plan and document deviations;

(4) prepare audit reports;

(5) conduct quality assurance reviews in accordance with professional standards and periodically take part in a comprehensive external peer review; and

(6) conduct economy and efficiency audits and program results audits as directed by the state agency's governing board.. Gov't Code § 2102.007.

You have not represented that the audit in progress was specified in an annual audit plan, and therefore is authorized under subsection (3); that it is a quality assurance review authorized under subsection (5); or that it is an economy and efficiency audit or program results audit directed by your governing board, and therefore authorized under subsection (6). However,

from our review of the submitted materials we conclude that this audit is authorized under Government Code section 2102.007.<sup>3</sup> Therefore, the audit working papers, including the information identified by you as communications prepared as a result of the ongoing audit, may be withheld under section 552.116 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

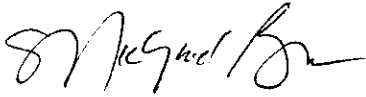
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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<sup>3</sup>We suggest that in the future you assert the specific statutory authority under which an audit is conducted when raising Government Code section 552.116, as the materials on their face will not always be sufficient to establish this exception.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Burns", with a stylized flourish at the end.

Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/nc

Ref: ID# 135702

Encl Submitted documents

cc: Mr. Carlos DeLaRosa  
Texas Department of Health  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756-3199  
(w/o enclosures)